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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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EXAMINER	
HIRSHFIELD, A	

ART UNIT	PAPER NUMBER
2859	14

DATE MAILED: 01/05/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No. 08/836,369	Applicant(s) Schmidt
	Examiner Andrew Hirshfeld	Group Art Unit 2859

☒ Responsive to communication(s) filed on *Nov 25, 1998*.

☒ This action is **FINAL.**

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire *3* month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) *1-9, 11, 13, and 16-81* is/are pending in the application.

Of the above, claim(s) *9* is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) *1-8, 11, 13, and 16-81* is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐approved ☐disapproved.

☒ The specification is objected to by the Examiner.

☒ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

DETAILED ACTION

Election/Restriction

1. In the amendment filed November 25, 1998, claim 9 has been included with the amended claims. However, as stated in the previous office action (paper number 12), this claim has been withdrawn from further consideration by the examiner, since it is directed to a non-elected species of the invention.

Oath/Declaration

2. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

The application number and date of the referenced PCT application is not correct. It appears that the correct citation should be PCT/EP96/03330, filed on July 29, 1996.

Specification

3. The following guidelines illustrate the preferred layout and content for patent applications. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

The following order or arrangement is preferred in framing the specification and, except for the reference to "Microfiche Appendix" and the drawings, each of the lettered items should appear in upper case, without underlining or bold type, as section headings. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

(a) Title of the Invention.
(b) Cross-References to Related Applications.
(c) Statement Regarding Federally Sponsored Research or Development.
(d) Reference to a "Microfiche Appendix" (see 37 CFR 1.96).
(e) Background of the Invention.
    1. Field of the Invention.
    2. Description of the Related Art including information disclosed under 37 CFR 1.97 and 1.98.
(f) Brief Summary of the Invention.
(g) Brief Description of the Several Views of the Drawing(s).
(h) Detailed Description of the Invention.
(I) Claim or Claims (commencing on a separate sheet).
(j) Abstract of the Disclosure (commencing on a separate sheet).
(k) Drawings.
(l) Sequence Listing (see 37 CFR 1.821-1.825).

4. The disclosure is objected to because of the following informalities:

On page 1, line 3, the reference to "Claim 1" should be deleted, since the claimed invention includes apparatuses differing from claim 1. See also, page 3, line 3.

Appropriate correction is required.

Claim Objections

5. Claims 5,1/4/5/6 and 8 are objected to because of the following informalities:

In claim 5, line 1, "sight" should be replaced with --light-- to correct a typographical error.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 8 and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 8: In line 2, the meaning of "an annular concentric markings" is not clear, since the introduction "an" is not consistent with the plural term "markings". Also, it is not clear whether or not "an annular concentric markings" is different structure from the "circular markings" introduced in

claim 5. In line 2, it is not clear what is meant by the phrase "in each case".

In claim 13, there is no antecedent basis for the phrases "the beam divider" and "the optical element". To expedite prosecution and for purposes of this office action only, claim 13 will be treated below as though it were dependent upon claim 11.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless --
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 16,18,19,21,23,26-30,32-34,36,38,40-42,45-60,62-67,70,71,73,74,76,77 and 79-81 are rejected under 35 U.S.C. 102(b) as being anticipated by Hollander et al. (5,368,392).

Hollander et al. '392 teaches a device and method for outlining an energy zone on a surface whose temperature is to be measured. The device includes a pistol grip radiometer in

combination with a laser aiming device. In the embodiment illustrated in figures 5 and 10, the laser device includes a means for simultaneously emitting a plurality of more than two laser beams towards the surface to outline the energy zone. In figure 10, the beams are divergent. As stated in col. 6, lines 49-51, individual lasers can be used or laser splitting devices can be used to split a single laser beam. The temperature measurement device can be positioned on the central axis of the plurality of laser beams, downstream of the beam splitter.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

11. Claims 1-4,7,17,20,22,24,25,31,35,37,39,68,72,75 and 78 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hollander et al. (5,368,392).

Hollander et al. '392 teaches all that is claimed, as discussed in the above rejection of claims 16,18,19,21,23,26-30,32-34,36,38,40-42,45-60,62-67,70,71,73,74,76,77 and 79-81, except for the sighting arrangement having a diffractive optical system (particularly a holographic element); an additional refracting or reflecting optical element; a mirror modifying the laser beams; and the temperature measurement device positioned laterally of the sighting device (for the embodiment shown having more than two laser beams).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Hollander et al. '392 by replacing the beam splitter thereof with a diffractive optical system, such as a holographic element, since such a diffractive optical system and the beam splitter of Hollander et al. '392 are equivalent and alternative devices for creating an image from a beam of light. One having ordinary skill in the art at the time the invention was made would recognize that any conventional beam splitting device could suffice in the device of Hollander et al. '392. To utilize an additional refracting or reflecting optical element or a mirror as claimed, would have been obvious as a choice of design, since one having ordinary skill in the art would recognize that these

components are standard for directing one or more beams to a desired location.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Hollander et al. '392 by positioning the temperature measurement devices (of the figures 5 and 10 embodiments) laterally of the sighting device, since Hollander et al. '392 teaches that such is old and well known (see figure 1), and since absent any criticality, such an arrangement is only considered a choice of engineering skill as neither non-obvious nor unexpected results will be obtained from such placement of the measurement device when at least three beams are directed to the object to be examined.

12. Claims 5,6,8,43,44,61 and 69 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hollander et al. '392 as applied to claims 1-4,7,17,20,22,24,25,31,35,37,39,68,72,75 and 78 above, and further in view of Japanese patent document 62-12848.

Hollander et al. '392 teaches all that is claimed, as discussed in the above rejection of claims 1-4,7,17,20,22,24, 25,31,35,37,39,68,72,75 and 78, except for the sighting

arrangement including two circular markings; and a marking for the center of the measurement spot.

Japanese patent document 62-12848 teaches a sighting arrangement including concentric annular circular markings.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Hollander et al. '392 by arranging the sighting arrangement to include concentric annular circular markings, since Japanese patent document 62-12848 teaches that such is old and well known in the art for providing sighting information to a user.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Hollander et al. '392 by arranging the light intensity distribution to include a further marking representing the center of the measurement spot, since Hollander et al. '392 teaches that "center" markings are old and well known for providing information to a user (see col. 4, lines 39-41 and col. 6, lines 47-49), and since Japanese patent document 62-12848 teaches that multiple marking can be utilized to mark a measurement spot to improve the accuracy of information provided to a user.

13. Claims 11 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hollander et al. '392 as applied to claims 1-4,7,17,20,22,24,25,31,35,37,39,68,72,75 and 78 above, and further in view of Everest.

Hollander et al. '392 teaches all that is claimed, as discussed in the above rejection of claims 1-4,7,17,20,22,24, 25,31,35,37,39,68,72,75 and 78, except for the beam divider being transparent for visible light and reflective for heat radiation emanating from the object.

Everest teaches a beam sighting system for an infrared thermometer, wherein a beam divider is transparent for visible light and reflective for heat radiation emanating from an object.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Hollander et al. '392 by including therein a beam divider that is transparent for visible light and reflective for heat radiation emanating from the object, since Everest teaches that such is advantageous for readily and conveniently directing heat radiation to a detector while also passing visible light to an object to be examined.

Response to Arguments

14. Applicant's arguments with respect to the claims (and Everest) have been considered but are moot in view of the new grounds of rejection.

15. Although claims have been copied from United States patents 5,823,678 and 5,823,679, an interference cannot be declared at this time, since the claims are not allowable due to the above rejection of the claims using the Hollander et al. '392 reference.

Conclusion

16. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened

statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Andrew Hirshfeld whose telephone number is (703) 305-6619.

Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center receptionist whose telephone number is (703) 305-4900.

AHH
Andrew Hirshfeld
Patent Examiner
Group 2859
January 3, 1999

Diego Gutierrez
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Technology Center 2800